

REMARKS

This response is submitted to the Office Action mailed April 6, 2005, in the above-identified patent application.

Reconsideration is respectfully requested for claims 1-13 and 15-18 in view of the following remarks.

The Examiner has noted that claims 8, 11, and 18 would be allowable if rewritten in independent form.

Claims 1-7, 9, 10, 12, 13 and 15-17 have been rejected under 35 USC §102(e) as being anticipated by Susil et al. U.S. 2003-0050557A1 the Examiner referring to the probe or catheter of Figs. 2A-2I as allegedly showing the claimed probe.

This rejection is respectfully traversed since this disclosure in Susil et al. is not prior art against the pending application. It is recognized that the Susil et al. published application does rightfully claim priority from Provisional Application 60/ 283,725 filed on April 13, 2001, even though this was more a year before the filing date of the published application on April 15, 2002, since April 13, 2002 was on a weekend.

However, while Susil et al. Provisional Application No. 60.283,725 was filed on April 13, 2001, this is after the effective filing date of the present application which claims priority from applicant's Provisional Application No. 60/217, 979 filed July 13, 2000. Applicant's provisional application fully discloses the probe as defined claims 1-13 and 15-18, and provides a priority date before the April 13, 2001 filing date of the Susil et al. Provisional Application No. 60/106,965.

It is noted that the embodiments of Susil Figures 2E-2I do not appear in Susil Continuation-in-Part Application No. 09/428,990 filed October 29, 1999, or in Provisional Application No. 60/106, 965 filed on November 4, 1998. Thus, the Examiner's rejection based on the Susil et al. Figures 2E-2I does not have priority from the October 29, 1999 date or the November 4, 1998 date. The earliest priority date for the embodiments of Figs. 2E-2I is from the Provisional Application filed on April 13, 2001, which is after the effective filing date of the present application of July 13, 2000.

Further, the Susil CIP application and the '965 Provisional Application do not show or suggest the invention as defined by claims 1-13 and 15-18.


Claims 12 and 15 have been rejected under 35 USC §103(a) as being unpatentable over Susil et al., the Examiner alleging that without statements of criticality of the shape of the electrodes, it is an obvious matter of design choice to form the electrodes of a particular shape.

This rejection is respectfully traversed for the reasons given above for the rejection under 35 USC §102(e). The embodiments of Figs. 2E-2I have an earliest priority date of April 13, 2001 which is after the effective filing date of the present application of July 13, 2000. The disclosure of Susil et al. in Publication No.: 2003-0050557A1 is not prior art against the present application.

Since Susil et al. is not prior art against the present application, it is respectfully submitted that claims 1-13, and 15-18 are patentable over Susil et al. under 35 USC §102(e) or §103. Accordingly, it is requested that claims 1-13 and 15-18 be allowed and the case advance to issue.

Should the Examiner have any question or comment concerning the present response a telephone call to the undersigned attorney is requested.

Respectfully submitted,
BEYER WEAVER & THOMAS, LLP


Henry K. Woodward
Reg. No. 22,672

P.O. Box 70250
Oakland, CA 94612-0250
(650) 314-5311